

## BILL ANALYSIS

S.B. 931  
By: Montford

Senate Bill Analysis  
6-13-89  
Enrolled

### BACKGROUND

Chapter 59, Education Code, allows the boards of regents of The University of Texas System, The Texas A & M University System, Texas Tech University, or The University of North Texas to establish self-insurance funds to pay damages based on a judgment or settlement involving a medical malpractice claim against a member of the medical staff or students at the particular units or institutions. Recent years have seen steadily escalating increases in the amount of institutional funds needed to pay the premiums on the self-insurance coverage. In addition, the number of medical malpractice claims has steadily increased, particularly those filed by patients receiving charitable care.

Present law (Chapter 104, Civil Practice and Remedies Code), provides for the indemnification of the public servants in certain cases. The public servants, listed in Section 104.001, Civil Practice and Remedies Code, include doctors of the institutions indemnification allowed is up to \$100,000 per person and \$250,000 per occurrence. However, Section 104.003, CPRC provides that the state is not liable under the chapter to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statutes. This provision renders the indemnification provision meaningless in all medical malpractice cases because institutional doctors are covered by self-insurance plans such as those allowed by Chapter 59 of the Education Code.

The indemnification provisions are further weakened by a unique interpretation of Section 104.002, CPRC by the Attorney General's Office. The Attorney General's Office essentially interprets that section as giving them authority to determine whether indemnification is made in any case. Other attorneys negligence cases, with the attorney general having discretion only in cases involving an intentional or grossly negligent act or an act done in bad faith or with conscious indifference or reckless disregard.

### PURPOSE

This bill requires the medical staff or students in a state medical institution to assign any right for indemnification to a medical malpractice plan created by the institution, clarifies the state liability for indemnification in certain cases and provides that the state shall be payor of the resort in medical malpractice claims against medical institutions that arise out of the provision of charitable care or services.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 59.01, Education Code, by adding Subdivisions (5) and (6), to define "charitable care or services" and "medical and dental unit."

SECTION 2. Amends Section 59.05, Education Code, to provide that notwithstanding Section 104.004(a), Civil Practice and Remedies Code, the board may employ private legal counsel to represent the medical staff.

SECTION 3. Amends Chapter 59, Education Code, by adding Section 59.08, as follows:

Sec. 59.08. (a) Allows a medical staffer or a student to assign his rights to receive indemnification from the state on any medical malpractice claim to a fund or a board.

(b) Requires the state to indemnify the board or fund in an equal amount to the settlement or judgment if a medical malpractice claim is paid or is to be paid as a result of a judgment or settlement.

(c) Prohibits a board or medical and dental unit or any fund or account of a board or medical and dental unit from being charged or assessed by the state for any amount of indemnification paid or to be paid to the state.

(d) Authorizes the attorney general and the governor to approve any settlement of the portion of a medical malpractice claim that may result in the liability of the state for indemnification under this chapter based on the best interest of the insured.

(e) Allows appropriated funds to be used to indemnify medical staff or students indemnified under this chapter.

(f) Prohibits indemnification amounts paid under this chapter from exceeding \$4,000,000 in any fiscal year. Provides that this chapter does not affect the power of the state to pay indemnification under Chapter 014, Civil Practice and Remedies Code.

SECTION 4. Amends Section 104.002, Civil Practice and Remedies Code, to clarify conditions under which the state is liable for indemnification.

SECTION 5. Amends Section 104.003(b), Civil Practice and Remedies Code, to set forth an exception, as provided by Section 104.0031, to state liability under this chapter.

SECTION 6. Amends Chapter 104, Civil Practice and Remedies Code, by adding Section 104.0031, as follows:

Sec. 104.0031. (a) Defines "medical malpractice claim" and "charitable care or services."

(b) Provides that the state is payor of first resort in charitable care or services indemnification on medical malpractice claims.

SECTION 7. Amends Section 104.004(b), Civil Practice and Remedies Code, to provide that the attorney general's authorization to settle or compromise the liability portion of a lawsuit is subject to the approval of the governor.

SECTION 8. Effective date: September 1, 1989.  
Makes application of this Act prospective.

SECTION 9. Emergency clause.